

# JUDGES 'CONSIDERATIONS IN SUBMITTING CRIMINAL UNDER SPECIFIC MINIMUM IN CRIMINAL ACTIVITIES OF TRANSPORTING WOOD WITHOUT LAWS

(Study on the Establishment of Judges of the West Pasaman District Court Number 94/Pid.Sus/2015/PN. Psb)

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**Abstract:** Judges have very broad freedom to determine the size or duration of a criminal threat (*strafmaat*) as a means of enforcing the enforcement or compliance with criminal provisions. In the practice of law enforcement against forestry crimes in the Legal Area of the West Pasaman District Court, it was found that there was a decision that imposed a criminal threat on the Defendant by breaking through special minimum rules as regulated in the PPPH Law in the Judge Decision on Case Number 94 / Pid. Sus / 2015 / PN Psb so it is not following the purpose of the law itself.

**Key Words:** Judges, Special Minimum Considerations, Forestry Crimes.

## 1. INTRODUCTION:

Judges are essentially law enforcers who have the main task in the judicial field, namely to receive, examine, decide and settle every case that is shown to him, as has been regulated in Law Number 48 of 2009 concerning Judicial Power (hereinafter referred to as the Judicial Power Act).

Judges have very broad freedom to determine the size or duration of a criminal threat (*strafmaat*), as a means of imposing the validity or compliance of the criminal provisions.[1] The judge has the freedom to make a decision based on his belief, as long as it is based on two valid pieces of evidence, it may affect the verdict handed down against the perpetrator.

### 1.1. THEORITICAL FRAMEWORK:

#### a. Theory of Legal Purposes

Gustav Radburch argues that the objectives of law are justice, expediency and legal certainty.[2]

#### b. Theory of Judges' Consideration

According to Wiryono Kusumo, considerations or what are often called *considerans* are the basis for a judge's decision or a judge's argument in deciding a case.

## 2. LITERATURE REVIEW:

Crimes or offenses in Dutch are called *strafbaar feit*, consisting of three words, namely *straf*, and *baarfeit*.

According to Simons, *strafbaar feit* is a *handling* (action/deed) against the law related to the fault (*schuld*) of someone who is able to take responsibility. Simons meant error is an error in a broad sense which includes intentional (*dolus*) and negligent or negligent (*culpa lata*).

The basis for eliminating the crime (*strafuitsluitingsgronden*) must be distinguished from the basis for eliminating prosecution (*verval van rechte tot strafvordering*).

The judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision that contains justice (*ex aequo et bono*) and contains legal certainty, besides that it also contains benefits for the parties concerned so that the judge's considerations must be addressed carefully, both , and careful.

## 3. METHOD:

The method used in this study is a normative juridical approach, namely an approach that uses a conception *positivist legislative*, which views law as identical with written norms made and promulgated by authorized institutions or officials.[3]

#### 4. DISCUSSION:

The role of law as protection is reflected through the function of law as a means of social control (social control), social change (social engineering) and law as an integrative means.[4] The law functions as the protection of human interests and also has the aim of creating an orderly and balanced society. In the Law on the Prevention and Eradication of Forest Destruction, there are minimum and maximum limits on the criminal threat, which will serve as a benchmark for sentencing by judges. A judge may impose a verdict within the minimum limit and it can also be in the maximum limit.[5]

Criminal decisions that are below the minimum limit can be considered too light and it is feared that they will not cause a deterrent effect for forestry criminals and can be said to be inconsistent with the spirit of the government which is currently trying seriously to prevent and eradicate forest crimes.

#### 5. ANALYSIS:

##### A. JUDGES' CONSIDERATIONS IN IMPOSING CRIMINALS BELOW THE SPECIAL MINIMUM IN CRIMINAL ACTS OF TRANSPORTING WOOD WITHOUT LEGAL CERTIFICATE OF FOREST PRODUCTS IN CASE NUMBER 94/PID.SUS/2015/PN. PSB

When discussing court decisions, it cannot be separated from the position of a judge in adjudicating a case and the considerations used by him in making a decision in the case being tried. The basis of the judge's consideration itself has an important position in a decision made by the judge because the better and more precise the considerations used by the judge in a decision will reflect the extent of the sense of justice that is in the judge who makes the decision.

##### B. JUDGES' CONSIDERATIONS IN IMPOSING CRIMINALS BELOW THE SPECIAL MINIMUM CRIMINAL IN THE CRIMINAL ACTION OF TRANSPORTING WOOD WITHOUT A LEGAL CERTIFICATE OF FOREST PRODUCTS IN CASE NO. PSB REVIEWED FROM THE THEORY OF LEGAL PURPOSE

When viewed from the point of view of the theory of justice, the Judge in a criminal decision under the special minimum threat, prioritizes the aspect of justice for the Defendant by observing and considering the actions of the Defendant, both from the subjective side and from the objective side. From the point of view of the theory of legal certainty against the imposition of a criminal under the special minimum threat, it can be said that such an application is considered unable to provide legal certainty in society, both at the normative level and at the implementation level. The judge in imposing a sentence on the Defendant has tried to accommodate the interests of the community, in this case represented by the state through law enforcement officers to prevent forest destruction and maintain a sustainable forest.

#### 6. CONCLUSION:

From the discussion as explained earlier, several conclusions can be drawn, including:

- The judge's consideration in imposing a penalty below the special minimum in the case of the crime of transporting wood without a certificate of legality of forest products in Case Number 94/Pid.Sus/2015/PN Psb Psb can be seen that the Judge in deciding the crime is based on considerations of philosophy punishment and the purpose of the application of the criminal in addition to the existence of non-juridical considerations on subjective and objective factors in the defendant in order to determine the severity of the crime.
- Judge's consideration based on the theory of legal objectives in imposing a criminal under the minimum penalty of special punishment in the case of the crime of transporting wood without a legal certificate of forest products in Case Number 94/Pid.Sus/2015/PN Psb Psb it can be seen that the Judge in giving the decision the sentence against the Defendant is based on the theory of justice and expediency which is carried out by approaching the legal interpretation of the Defendant's actions.

#### 7. SUGGESTIONS:

The suggestions given by researchers are as follows:

- So that the legislators in formulating the threat of criminal sanctions first look holistically at the condition of the Indonesian people.
- The Supreme Court needs to issue a Circular with regard to the conditions under which it is possible for Judges to impose criminal penalties under special criminal threats such as Circulars in other arrangements that regulate this matter.

**REFERENCES:**

1. Muladi, *Hal-hal Yang Harus Dipertimbangkan Hakim Dalam Menjatuhkan Pidana Dalam Rangka Mencari Keadilan Dalam Kapita Selekta Sistem Peradilan Pidana*, Badan, Universitas Diponegoro, Semarang, 1995, page 107.
2. Shinta Agustina, *Asas Lex Spesialis Derogat Legi Generali dalam Penegakan Hukum Pidana*, 2014, Yogyakarta: Themis Book. Page 25.
3. Soerjono Soekanto berpendapat bahwa tipologi penelitian hukum dapat dibagi dalam penelitian hukum normatif dan penelitian hukum empiris. Zainuddin Ali, 2016, *Metode Penelitian Hukum*, Jakarta: Sinar Grafika, page 12.
4. Sajipto Rahardjo, *Hukum dan Perubahan Sosial*, Alumni, Bandung, 1983, page 127-146.
5. Muladi dan Barda Nawawi Arief, *Teori – Teori dan Kebijakan Pidana*, cet. 2., Alumni Press, Bandung, 1998, page 57.